

REMARKS

The Office Action mailed September 6, 2002 required applicants to elect one group of claims under 35 U.S.C. 121 for further prosecution from:

Group I, claims 1-17 and 35-46, drawn to a cabinet assembly for holding food products, classified in class 126, subclass 3; and

Group II, claims 18-34 and 47-51, drawn to a method of storing food products.

Applicants provisionally elect, with traverse, for further prosecution in this application, the invention identified in the Office Action as Group I, claims 1-17 and 35-46.

Groups I and II are related to each other in that Group I is directed to a cabinet assembly for holding pre-processed food products and Group II is directed to a process for maintaining the product appearance of a pre-processed food product. If the restriction requirement is nonetheless maintained, applicants reserve the right of rejoinder of the subject matter of the non-elected claims or the right to pursue canceled subject matter in a continuation and/or divisional application.

It is respectfully submitted that examination of all of the claims pending in this application is in the spirit of the right of rejoinder such that the restriction requirement should be reconsidered, and reformulated or withdrawn entirely.

It would seem, that to require the filing of a separate divisional application(s) directed to Group II claims will result in the very same search being repeated, but at a later date(s). It is submitted that the duplicate search(es) would be quite inefficient to the operation of the Patent and Trademark Office. Furthermore, the same Examiner may be in charge of the divisional case; but since the divisional application will be examined at a much later date, the Examiner will have to conduct a duplicate, redundant search at the time he examines the divisional application.

Alternatively, if a different Examiner(s) were assigned to the divisional application, a significant loss of PTO efficiency would be incurred as a result of the examination of the divisional application(s).

Thus, the only logical outcome of the present restriction requirement would be to delay the examination of the Group II claims, resulting in inefficiencies and unnecessary expenditures by Applicants and the PTO, and since a single search can be performed for the claims without any significant burden on the Office, it is respectfully requested that this restriction requirement be withdrawn.

In this regard the Examiner is respectfully invited to consider the extreme prejudice to Applicants by the present restriction requirement, including: the necessity of having to pay an additional filing fee to the PTO and others for prosecuting each additional application; the loss of patent term for the Group II claims if Applicants must now file a separate application at this time directed thereto due to prosecution of such application beginning far later than prosecution to date in the present application; and to the post GATT 20 year patent term calculating from the earliest U.S. filing date.

Additionally, the Examiner is respectfully invited to review the text of MPEP §803, which in part states (with emphasis) that:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The results of the present restriction requirement are inefficiencies and unnecessary expenditures by both the Applicants and the PTO, and extreme prejudice to Applicants.

Therefore, the restriction has not been shown to be proper, especially since the requisite showing

of serious burden has not been made in the Office Action, there are relationships between Group I claims and Groups II and III claims. All of these militate against restriction.

In view of the foregoing, reconsideration and withdrawal of the requirement for restriction and favorable consideration of all of the claims on the merits are respectfully requested.

Thus, if the restriction requirement is nonetheless maintained, applicants reserve the right of rejoinder or the right to pursue canceled subject matter in a continuation and/or a divisional application as mandated by the MPEP.

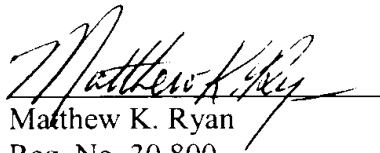
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Early and favorable examination of all of the claims on the merits is respectfully requested.

In view of the foregoing, reconsideration and withdrawal of the requirement for restriction and favorable reconsideration of Groups I and II claims on the merits are respectfully requested.

Respectfully submitted,
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